



September 16, 2002

Mr. Matthew C. G. Boyle
Assistant Town Attorney
Town of Westlake
4201 Wingren, Suite 108
Irving, Texas 75062-2763

OR2002-5199

Dear Mr. Boyle:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168590.

The Town of Westlake (the "town") received a request for fourteen categories of information related to the town. You claim exceptions only for items 6, 7, 9, 12, and 14, which relate to proposed or draft budgets and the Trophy Club Master District ("Trophy Club") application for Certificate of Convenience and Necessity ("certificate"). To the extent that any information is responsive to the remainder of the request, we assume that it has been released. If you have not released any such information, you must release it to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302. You claim that the submitted information is excepted from disclosure under sections 552.103, 552.106, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹ We have also considered the comments submitted by the requestor. *See* Gov't Code § 552.304 (providing for submission of public comments).

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We begin by considering your arguments under section 552.107. Section 552.107(1) of the Government Code excepts information “that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct[.]” While section 552.107(1) appears to apply to information within rule 1.05 of the Texas Disciplinary Rules of Professional Conduct, this office determined that section 552.107 cannot be applied as broadly as written to information in the possession of an attorney for a governmental body. Open Records Decision No. 574 (1990). Section 552.107(1) protects only the attorney’s communication of legal advice or opinion to the client and communications from a client to an attorney where those communications are made in confidence and in furtherance of the attorney rendering professional legal service to the governmental body. *Id.* at 5. We determine the applicability of section 552.107(1) on a case-by-case basis. After review of the information at issue, we agree that the information submitted as Exhibits C and D reflect either client confidences or an attorney’s legal advice or opinions. The town may therefore withhold Exhibits C and D under section 552.107(1).

Next, we address your arguments under section 552.106 of the Government Code. Section 552.106(a) of the Government Code protects a “draft or working paper involved in the preparation of proposed legislation.” Section 552.106 ordinarily applies only to persons with a responsibility to prepare information and proposals for a legislative body. Open Records Decision No. 460 (1987). The purpose of section 552.106 is to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the members of the legislative body, and therefore, it does not except from disclosure purely factual information. *Id.* at 2. However, a comparison or analysis of factual information prepared to support proposed legislation is within the ambit of section 552.106. *Id.* A proposed budget constitutes a recommendation by its very nature and may be withheld under section 552.106. *Id.* You state that the town management is charged with the official responsibility for preparing draft budgets for consideration by the town’s Board of Aldermen. You state that budgets must be approved by the town’s Board of Aldermen through legislative action in order to become effective, and that the documents are not in final recommendation form.

Having reviewed your arguments and the information at issue, we conclude that, as you indicate that the budget estimates are not complete at this time, you may withhold the information from the requestor under section 552.106(a). *See* Open Records Decision No. 460 (1987) (city’s proposed budget protected by predecessor provisions to section 552.106(a)). However, to the extent a proposed budget item has been revealed to the public during a town meeting, the town has waived the protection of section 552.106. *Cf.* Open Records Decision No. 435 at 4 (1986) (denying section 552.111 to the extent information has been publicly disclosed). Furthermore, on completion of the budget proposal, the submitted information is public. *See* Gov’t Code § 552.022(a)(5) (making discretionary exceptions to disclosure inapplicable to all information used to estimate the need for or expenditure of public funds or taxes, on completion of estimate). Because we

base our ruling on the foregoing exceptions, we need not consider your other arguments against public disclosure of the submitted information.

In summary, the town may withhold Exhibits C and D under section 552.107(1). The town may withhold Exhibit E under section 552.106.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

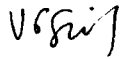
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 168590

Enc: Submitted documents

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(w/o enclosures)